# IN THE SUPREME COURT OF NEW JERSEY

## Docket No. 089292

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| JERSEY CITY UNITED AGAINST THE NEW WARD MAP, DOWNTOWN COALITION OF NEIGHBORHOOD ASSOCIATIONS, GREENVILLE NEIGHBORHOOD ALLIANCE, FRIENDS OF BERRY LANE PARK, RIVERVIEW NEIGHBORHOOD ASSOCIATION, PERSHING FIELD NEIGHBORHOOD ASSOCIATION, SGT. ANTHONY NEIGHBORHOOD ASSOC., GARDNER AVENUE BLOCK ASSOCIATION, LINCOLN PARK NEIGHBORHOOD WATCH, MORRIS CANAL REDEVELOPMENT CDC, HARMON STREET BLOCK ASSOCIATION, CRESCENT AVENUE BLOCK ASSOCIATION, DEMOCRATIC POLITICAL ALLIANCE, and FRANK E. GILMORE, in his individual and official capacity as Ward F Councilman,<br><br>*Plaintiffs-Petitioners,*<br><br>vs.<br><br>JERSEY CITY WARD COMMISSION and JOHN MINELLA, in his official capacity as Chair of the Commission,<br><br>*Defendants-Respondents.* | ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION<br>Docket No. A-0356-22<br><br>Sat Below:<br><br>Hon. Robert Gilson P.J.A.D.<br>Hon. Patrick DeAlmeida, J.A.D.<br>Hon. Avis Bishop-Thompson, J.A.D.<br><br>CIVIL ACTION |

# DEFENDANTS-RESPONDENTS' OPPOSITION TO BRIEF OF *AMICUS CURIAE* LEAGUE OF WOMEN VOTERS

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## PRELIMINARY STATEMENT

The League of Women Voters of New Jersey ("LWV") asks this Court to disregard six decades of consistently applied precedent that the one-person, one-vote principle is paramount to all other considerations and write into the Municipal Ward Law ("MWL") a concept that the Legislature chose not to include: "communities of interest." For sixty years, following the directive of the United States Supreme Court, this Court has made clear that prioritizing considerations like "communities of interest" over the one-person, one-vote principle violates the Fourteenth Amendment of the United States Constitution.

Notably, despite its importance throughout decades of jurisprudence, LWV does not mention the one-person, one-vote principle anywhere in its brief. Instead, it asks this Court to rewrite the MWL to implement redistricting criteria and principles that are entirely unworkable and have been rejected by this Court and by the highest courts in other states for that very reason. This Court should decline LWV's invitation to write "communities of interest" into the law as it would set our State back half a century and return New Jersey to a time when land and tradition were afforded more influence in the legislative process than those the government actually exists to serve: the voters.

## ARGUMENT

### I. LWV IGNORES THE LONG-RECOGNIZED PRIMACY OF THE ONE-PERSON, ONE-VOTE REQUIREMENT OF THE FOURTEENTH AMENDMENT IN APPORTIONMENT.

In Reynolds v. Sims, 377 U.S. 533 (1964), the United States Supreme Court struck down state apportionment schemes that were not based on the one-person, one-vote principle. At the time, New Jersey was such a state: Until 1966, New Jersey's Legislature was apportioned using a county-based scheme wherein each county had a single senator and assembly people were apportioned based on each county's population, similar to how members of the U.S. House of Representatives are apportioned based on state population. See Jackman v. Bodine, 43 N.J. 453, 461 (1964) (Jackman I) (noting that at the time Reynolds was decided New Jersey's and the federal government's legislature were essentially the same in structure).

In New Jersey, "the county had always been a traditional political subdivision and . . . its citizens had a **community of interest** in governmental matters . . . ." Davenport v. Apportionment Comm'n, 65 N.J. 125, 129 (1974) (emphasis added) [hereinafter Davenport II]. As this Court explained in Jackman I, the county served as the basis for apportionment in New Jersey because a county's residents share a common interest in governmental and economic issues:

> The citizens of each county have a community of interest by virtue of their common responsibility to provide for public needs and their investment in the plants and facilities established to that end. Anciently, and still today, the counties reflect different economic interests, although of course these economic interests are to perfectly contained or separated by any political line, municipal, county or State. So, certain counties have a dominant concern with manufacturing and commerce; others have a large stake in agriculture; still others lean heavily upon the resort industry; and finally a few counties have a special interest in the products of the sea. And of course there may be competing area interests in such matters as highways, taxation, and water supply.
>
> [Jackman I, 43 N.J. at 462-63.]

Apportioning voters based on communities of interests, however, did not come without costs. It meant that land had as much influence as actual people. As long-serving Assemblyman Allen J. Karcher, Speaker of the Assembly from 1982 to 1986, observed in his classic analysis of the Garden State, New Jersey's Multiple Municipal Madness, the system of state legislative apportionment that prevailed for nearly 200 years resulted in unequal representation: "The cities were grossly under- represented and the rural counties unfairly overrepresented in the legislature in 1966, by which time it was too late." Alan J. Karcher, New Jersey's Multiple Municipal Madness, 135-37 (Rutgers Univ. Press 1998).

> The land always voted in New Jersey and this state suffered enormously from the variance between population and voting strength. The origin of this practice that so dominated the political tradition of the

state can be traced to the negotiations leading up to the surrender of the Proprietors to Queen Anne on April 15, 1702.

. . . .

The effect of the historical malapportionment of the Senate resulted in the domination of land, not people, for almost 200 years . . . . The structure of the Senate . . . could be described as a system under which the land owned the people. The pine trees of the barrens stretching across Ocean, Burlington, Atlantic, Cape May, and Cumberland Counties had more influence in Trenton than any county in the north, no matter how densely populated.

At the height of the great railroad wars in 1870, a coalition of eleven senators representing the least populated counties were in a position to control the fate of New Jersey—despite the fact that their aggregate constituencies amounted to less than 20% of the state's population.

By 1960, the hypothetical coalition of eleven senators from the least populated counties were being sent to the State House by about 10 percent of the state's population. Even worse, it only took a majority of the Republican Senate Caucus to control the fate of any legislation; thus, a coalition representing about 5 percent of the state had a stranglehold on the other 95 percent.

. . . .

The decision to repose political power in the counties irrespective of population had enormous and unforeseen consequences, which mirror and reinforce the thesis of this book. *Political decisions driven by socioeconomic-political considerations of times long past have paralyzed and frustrated the ability of future generations to make intelligent or even rational policy choices*.

[Id. (emphasis in original)].

In Reynolds, the United States Supreme Court drew a clear line from the history of "[r]acially based gerrymandering and the conducting of white primaries"—both of which had already been held to be unconstitutional—to its finding in 1964: that apportionment schemes, like New Jersey's, were being used as "restrictions" on "[t]he right to vote freely for the candidate of one's choice." 377 U.S. at 555. The Supreme Court explained that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Id. It further noted that "[t]here is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a level in a voting booth." Id. at 555 n. 29 (quoting South v. Peters, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)). Indeed, "[t]he right to vote includes the right to have the vote counted at full value without dilution or discount." Id. And, if "a favored group has full voting strength" while "groups not in favor have their votes discounted," the "federally protected right suffers substantial dilution." Id. Thus, recognizing the unconstitutionality of voting systems that used geography to selectively favor or disfavor certain groups of voters, the Supreme Court ruled that the Fourteenth Amendment's "one-person, one-vote" guarantee made

systems like New Jersey's county-based legislative apportionment obsolete, unsupportable, and illegal. Id.

> We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.
>
> [Reynolds, 377 U.S. at 568.]

Notably, four years later, the United States Supreme Court applied the Reynolds directive to county and municipal apportionment. In Avery v. Midland Cnty., Tex., 390 U.S. 474 (1968), the Court held that the one-person, one-vote principle also applied to municipalities, explaining that there is "little difference, in terms of the application of the Equal Protection Clause and of the principles of Reynolds v. Sims, between the exercise of state power through legislatures and its exercise by elected officials in the cities, towns, and counties."

Following the United States Supreme Court's holding in Reynolds, this Court found New Jersey's "community of interest" based apportionment scheme violative of the Fourteenth Amendment and enjoined any further elections held pursuant to it. Jackman I, 43 N.J. at 476. The State Constitution was then amended to comply with Reynolds and the guidance offered by this Court in Jackman I and now requires, *inter alia*, that

> Assembly districts shall be composed of **contiguous** territory, **as nearly compact** and equal in the number of their inhabitants as possible, and in no event shall each such district contain less than eighty per cent nor more than one hundred twenty per cent of one-fortieth of the total number of inhabitants of the State . . . .
>
> [N.J. Const. art. IV, § II, ¶ 3.]

Pursuant to this constitutional amendment, and to comply with the Fourteenth Amendment as mandated by the United States Supreme Court and the New Jersey Supreme Court, our State's counties and municipalities are now split among congressional and legislative districts.

The decisions in Reynolds and Jackman I and the subsequent constitutional amendment led to a decade-long process in which this Court oversaw the eradication of the State's legacy, county-based legislative apportionment scheme in favor of a scheme whose guiding star was the principle of one-person, one-vote. See McNeil v. Leg. Apportionment Comm'n, 177 N.J. 364, 374-82 (2003) (detailing this Court's extensive districting jurisprudence in the seven Jackman cases; Scrimminger v. Sherwin, 60 N.J. 483 (1974); Davenport v. Apportionment Comm'n, 63 N.J. 433 (1973) [hereinafter Davenport I]; and Davenport II). What emerged from these cases was a clear directive: "population equality must be distinctly paramount" to every other districting consideration—including preserving communities of interest. Jackman v. Bodine, 49 N.J. 406, 419 (1967) [hereinafter Jackman V]. In fact,

the Jackman V Court explained that "so-called community interests" are "wholly irrelevant" in redistricting. Id. at 418. With this in mind, in 1981, the Legislature enacted the Municipal Ward Law, N.J.S.A. 40:44-9 to -18, and adopted the same requirements that the Constitution requires for legislative districts: contiguity, compactness, and a not to exceed range for population deviation. N.J.S.A. 40:44-14.

Following the 2020 decennial census, it became apparent that Jersey City was out of compliance with the requirements of the MWL and, specifically, the one-person, one-vote principle. See Pa54-64[1] (Report of the Ward Commission). Due to immense population growth during the 2010s—particularly in the waterfront district of Ward E—the population deviation among the wards was over fifty-nine percent, well above the ten percent threshold mandated in the MWL. See id.; N.J.S.A. 40:44-14. In 2020, the population of Ward E exceeded that of the next most populous ward (Ward F) by more than 21,000 people and the least populous ward (Ward D) by more than 28,000 people. See Pa54-Pa64. As a result, the residents of Ward D had an outsized presence on the City Council compared to the voters in Ward E. In other words, the Jersey City apportionment

[1] Citations to "Pa" refer to Jersey City United Plaintiffs' Appendix in Support of Their Appeal.

scheme was unlawful under the MWL and violated the Fourteenth Amendment of the United States Constitution. Something had to be done.

And something was done. In 2022, the Jersey City Ward Commission convened to draw a new map. Because of its massive population growth, Ward E needed to shrink both geographically and in population size. By necessity, the residents of Ward E were moved into adjacent wards like Ward F, represented by Plaintiff Frank E. Gilmore. At the end of this process, the Ward Commission had reduced the population deviation among Jersey City's wards to a miniscule 1.8%. Pa54-Pa64. In so doing, the Ward Commission brought Jersey City back into compliance with the MWL and the mandates of the Fourteenth Amendment of the United States Constitution. See Avery, 390 U.S. at 480-81.

To advance the one-person, one-vote principle, the Commission had to make tough decisions. Indeed, it had no choice given the degree of population growth as well as where that growth was concentrated. Now, despite the Commission complying with the MWL—including achieving just 1.8% population deviation—LWV asks this Court to second guess the Commission's decision and return to the drawing board. As it has in the Legislative and Congressional context, absent an affirmative showing of invidious discrimination, this Court should reject such a request and instead should continue to reiterate that all voters are equal and all voters deserve to have the

same say in the legislative bodies that govern them. With no allegation (let alone a showing) of invidious discrimination, the Law Division's dismissal of Plaintiffs' complaints should be affirmed.

## II. THE MWL DOES NOT CREATE A CAUSE OF ACTION BASED ON TREATMENT OF "COMMUNITIES OF INTEREST" IN REDISTRICTING, AND LWV CANNOT INDUCE THIS COURT TO REWRITE THE MWL TO DO SO.

At the time the MWL was written, New Jersey had a long history of interpreting the term "compact"—including whether that term encompassed "communities of interest." Indeed, by the time the MWL was enacted in 1981, this Court had already determined the following:

- "[P]opulation equality must be distinctly paramount" to compactness. Jackman V, 49 N.J. at 419.
- "[S]o-called community interests . . . . are wholly irrelevant to [compactness] and cannot support deviations of any kind." Id.
- Compactness is "of limited utility in the light of the odd configurations of our State and its municipalities." Davenport I, 63 N.J. at 443 (citing Jackman V at 419).
- Absent "the carving out of bizarrely-shaped districts for partisan advantage," compactness is "a much reduced factor." Davenport II, 65 N.J. at 134.

Moreover, in 1968, the United States Supreme Court applied the one-person, one-vote principle to municipalities, thereby elevating population deviation over any other districting factor. Avery, 390 U.S. at 481.

Thus, when enacting the MWL, the Legislature was aware, not only of the legislative districting requirements of the New Jersey Constitution, but also how

this Court had interpreted those requirements in light of the United States Supreme Court's clear admonition that one-person, one-vote must be the guiding principle. See, e.g., Farmers Mut. Fire Ins. Co. of Salem v. N.J. Property-Liability Ins. Guar. Ass'n, 215 N.J. 522, 543 (2013) ("The Legislature is presumed to be aware of the decisional law of this state."); Yanow v. Seven Oaks Park, Inc., 11 N.J. 341, 350 (1953) ("A legislative body in this State is presumed to be familiar not only with the statutory law of the state, but also with the common law.").

Accordingly, in enacting the MWL, the Legislature adopted the exact same requirements that the Constitution requires for legislative districts: "each ward [must be] formed of **compact** and **contiguous** territory. The **population** of the most populous ward so created shall not differ from the population of the least populous ward so created by more than 10% of the mean population of the wards derived by dividing the total population of the municipality by the number of wards created." N.J.S.A. 40:44-14 (emphasis added); compare N.J. Const. art. IV, § II, ¶ 2 ("The Assembly districts shall be composed of contiguous territory, as nearly compact and equal in the number of their inhabitants as possible, and in no event shall each such district contain less than eighty per cent nor more than one hundred twenty per cent of one-fortieth of the total number of inhabitants of the State . . . .").

Tellingly, LWV's brief addresses none of these criteria. Instead, LWV focuses on "communities of interest," a concept that is nowhere to be found in the MWL.[2] This Court has long held that courts "cannot 'write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment.'" Keim v. Above All Termite & Pest Control, 256 N.J. 47, 62-63 (2023) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). Yet, that is precisely what LWV demands that this Court do: add a "communities of interest" criterion to the MWL, overruling the Legislature's decision not to include that criterion.

The Court should not do so. "It is not [this Court's] function to rewrite a plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language." Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012). Rather, "[this Court's] duty is to

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[2] LWV does try to connect "communities of interest" to the compactness criterion, stating in conclusory fashion that "communities of interest" are "intertwined with compactness." LWV Br. at 9. But that is plainly not so. A non-compact, salamander-like district might keep "communities of interest" (however that might be defined) intact, while a district shaped like a perfect square or circle might break up such communities. Indeed, LWV's own quotation from Allen v. Milligan, 599 U.S. 1, 35 (2023) lists "communities of interest" and "compactness" as separate considerations—neither being an element of the other. LWV Br. at 5. Thus, "communities of interest" is a concept distinct from the compactness criterion of the MWL, and LWV's attempt to subsume one within the other must fail.

construe and apply the statute as enacted." In re Closing of Jamesburg High Sch., 83 N.J. 540, 548 (1980). LWV cannot be heard to urge this Court to violate its duty by rewriting the MWL to add "communities of interest" as a ward redistricting factor.

Instead, this Court should reject LWV's arguments, as have the Supreme Courts of other states. See In re Senate Joint Resol. of Legis. Apportionment 1776, 83 So.3d 597, 633 (Fla. 2012) ("If we were to include 'communities of interest' within the term 'compactness,' the Court would be adding words to the constitution that were not put there by the voters of this state."); City of Manchester v. Sec'y of State, 48 A.3d 864, 878 (N.H. 2012) ("Nothing in the New Hampshire Constitution requires a redistricting plan to consider 'communities of interest.'"); In re Legis. Districting, 805 A.2d 292, 297 (Md. 2002) (noting that when Maryland's constitutional provisions regarding apportionment were redrafted, "communities of interest" could have been included among the criteria, but was not, and court would therefore incorporate it).

## III. THE HIGHEST COURTS OF OTHER STATES HAVE REFUSED TO WRITE "COMMUNITIES OF INTEREST" INTO REDISTRICTING PROVISIONS THAT DO NOT CONTAIN THAT CONCEPT.

LWV cites cases from several jurisdictions that have factored "communities of interest" into Congressional or statewide (but not municipal)

redistricting analysis. LWV Br. at 8-9 (citing cases from California, Vermont, Rhode Island, and Colorado). But these citations provide no support for the LWV's position here for two reasons: First, the cases LWV relies on do not involve the **municipal** context. Second, every one of the jurisdictions LWV references has a constitutional provision, statute, or administrative redistricting guideline that **calls for consideration of "communities of interest."** LWV's own brief and the law review articles it cites confirm as much.[3] By contrast, as amply discussed above, **New Jersey's MWL contains no such provision**. LWV's out-of-state citations are thus of no force whatsoever.

The federal cases cited by LWV are just as inapposite because they all involved issues arising under the Voting Rights Act. See LWV Br. at 5, 7-8. Plaintiffs here have not invoked the VRA—and, in fact, **Plaintiffs specifically**

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[3] See LWV Br. at 8 (quoting Glenn D. Magpantay, A Shield Becomes a Sword: Defining and Deploying a Constitutional Theory for Communities of Interest in Political Redistricting, 25 Barry L. Rev. 1, *7-8 (2020) (listing Colorado among "[t]he state constitutions [that] require the preservation of communities of interest in redistricting," and California and Vermont among the states with "statutes [that] require the same"); Sandra J. Chen, et al., Turning Communities of Interest Into a Rigorous Standard for Fair Districting, 18 Stan. J.C.R. & C.L. 101, 184 (2022) (quoting Act of July 6, 2021, 2021 R.I. Laws ch. 21-176, as stating "Congressional and state legislative districts [but not municipal districts] shall be as compact in territory as possible and, to the extent practicable, shall reflect natural, historical, geographical and municipal and other political lines and communities of interest, as well as the right of all Rhode Islanders to fair representation and equal access to the political process").

**pleaded that the VRA does *not* apply**. Pa29-Pa30 ("[A] Voting Rights Act claim is beyond the scope of this Complaint . . . .").

Further undermining LWV's reliance on inapplicable case law from other jurisdictions, other states that do **not** have a constitutional, statutory, or other source of law that supports a cause of action based on "communities of interest" have **rejected** litigants' efforts to have courts invent or read such requirements into existing law. For instance, most of the state court cases cited by LWV were rejected by name by the Supreme Court of Florida in In re Senate Joint Resol., 83 So.3d at 632-33 & n.33 (specifically disagreeing with Wilson v. Eu, 823 P.2d 545 (Cal. 1992); In re Reapportionment of Towns of Hartland, Windsor & W. Windsor, 624 A.2d 323 (Vt. 1993); and Parella v. Montalbano, 899 A.2d 1226 (R.I. 2006)). After rejecting those cases as inapposite, Florida's high court emphasized that "**[t]he concept of 'communities of interest' is not part of the constitutional term 'compactness**.'" Id. at 651 (emphasis added); see also In re Constitutionality of House Joint Resol. 1987, 817 So.2d 819, 831 (Fla. 2002) (stating that neither the United States Constitution nor the Florida Constitution required the Florida Legislature to "preserve communities of interest").

Florida is not alone among such states. The highest courts of Maryland, New Hampshire, and Missouri have issued similar rulings. See In re Legis. Districting, 805 A.2d at 297 (while political branches can consider

"communities of interest" in redistricting if they choose, courts cannot do so, as that would be relying on "improper non-legal criteria" beyond those contained in Maryland's Constitution); City of Manchester, 48 A.3d at 878 (alteration in original) (finding no "individual constitutional right to have one's particular community of interest contained within one [legislative] district"); Johnson v. State, 366 S.W.3d 11, 30 (Mo. 2012) (listing "maintaining communities of interest" as among factors that the Missouri Supreme Court does not recognize"); see also Graham v. Thornburgh, 207 F. Supp. 2d 1280, 1296 (D. Kan. 2002) (emphasis in original) (though "preserving communities of interest" was included in Kansas Legislature's Redistricting Guidelines, "the fact that this is a legitimate *goal* does not mean that there is an individual constitutional *right* to have one's particular community of interest contained within one congressional district").

As is the case in these sister states, New Jersey's MWL provides no cause of action based on "communities of interest." As discussed, if the Legislature intended for communities of interest to be a factor, it would have said so. Thus, this Court should reject LWV's request that it read into the MWL a concept that our Legislature chose not to include and that this Court, in its last sixty years of jurisprudence, has declined to require.

## IV. THE COURT SHOULD NOT READ A "COMMUNITIES OF INTEREST" REQUIREMENT INTO THE MWL, BECAUSE IT WOULD SET A STANDARD THAT IS VAGUE AND UNWORKABLE IN PRACTICE.

In deciding this appeal, this Court should also consider the practicality of the result that it reaches. LWV's cited law review articles make clear that scholars view the concept of "communities of interest" as desirable in theory, **but often unworkable for courts in practice**. For that reason, too, this Court should reject LWV's attempt to rewrite the MWL to incorporate "communities of interest" as a redistricting factor.

Glenn D. Magpantay, A Shield Becomes a Sword: Defining and Deploying a Constitutional Theory for Communities of Interest in Political Redistricting, 25 Barry L. Rev. 1 (2020) repeatedly recognizes the impracticability of "communities of interest" in redistricting. The author states that the concept can "be vague and therefore difficult to apply. While there may be easier ways to identify socio-economic characteristics, identifying similar values and shared interests with spatial boundaries can be more difficult." Id. at 8. He goes on to explain that "neighborhoods" and "communities" are "often confused," and that defining a "community of interest" is highly subjective at best: "individual perception of where their neighborhood begins and ends may likewise shrink or expand depending on context, personal experience, and other factors including their socioeconomic status, educational attainment, and whether they are recent

immigrants or not."[4] Id. at 8-9. As a result, "identifying 'actual shared interests' is more challenging in that it is characteristically more subjective." Id. at 13. Ultimately, the author concludes that "[d]rawing congressional, state legislative, or city councilmanic districts to encompass communities of common interest has always been a vague sought after, yet elusive ideal." Id. at 32.

Sandra J. Chen, et al., Turning Communities of Interest Into a Rigorous Standard for Fair Districting, 18 Stan. J.C.R. & C.L. 101 (2022) likewise concedes that it is hard even to define "communities of interest." "The existing scholarly literature is often divided on questions of defining and identifying COIs, particularly in terms of objective and quantitative versus subjective and qualitative measures." Id. at 107. And, at a practical level, "the degree to which residents identify with county and neighborhood units often varies, and preexisting government lines do not necessarily reflect meaningful communities." Id. at 113. Given all that, the authors then say that their article will not consider local government units further. Ibid.

Finally, Karin MacDonald and Bruce E. Carin, Community of Interest Methodology and Public Testimony, 3 U.C. Irvine L. Rev. 609 (2013) is

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[4] Indeed, the impracticality of the notion, and the futility in attempting to draw lines that define communities of interest more granular than the political lines already drawn between counties or municipalities, is the subtext of Jackman I. See, e.g., 43 N.J. at 462-63.

especially clear-eyed about the amorphousness and subjectivity of "communities of interest":

> COI considerations—the expectation that districts be composed of "cognizable" common interests—are harder to identify a priori because there is a subjective component to the interests and boundaries of a given COI. The "interest" in a COI is not merely a clustering of some measurable social or economic characteristic. Residents in that area have to perceive and acknowledge that a social, cultural, or economic interest is politically relevant. COI geography is ultimately subjective as well. The boundaries of an interest "community" do not usually coincide neatly with government jurisdictions or follow fixed, uniform patterns.
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> [Id. at 612.]

The fact is, "communities of interest" as a notion is subject to multiple interpretations: any two viewers may look at the same county or municipality, perceive different communities of interest, and envision the boundaries among those communities to be located in different places. The fact that there are an infinite number of maps that could be drawn to divide Jersey City into six contiguous, compact, and similarly-populated wards should be a reminder that, if every person with a different vision has a recognized cause-of-action to enforce that vision, then a ruling in Plaintiffs' favor invites infinite litigation—not just in Jersey City but in any of the sixty-four New Jersey municipalities that are divided into wards for local representation.

Courts have recognized this when they described "communities of interest" as an unworkable standard for courts to employ in practice. See, e.g., In re Legis. Districting, 475 A.2d 428, 445 (Md. 1982) (holding "communities of interest" to be a "nebulous and unworkable" concept: "We think it apparent that the number of such communities is virtually unlimited and no reasonable standard could possibly be devised to afford them recognition in the formulation of districts within the required constitutional framework"); Graham, 207 F. Supp. 2d at 1296 (noting that "communities of interest" "may overlap and be defined in different ways"). This is especially true in redistricting municipalities—which, like counties in Jackman I can be considered communities of interest themselves—where there is often no objective way to define what "neighborhood" makes up a "community of interest."

Finally, there is broad agreement, among scholars and out-of-state case law, that consideration of "communities of interest" is a political process that is for elected representatives—not the courts. Thus, Chen et al., states that dealing with "communities of interest" is "more appropriately a matter for state regulation, not constitutional doctrine." Chen et al, supra at 613. Likewise, Maryland's high court declined to read "communities of interest" into constitutional apportionment criteria, while also noting: "This is not to say that, in preparing the redistricting plans, the political branches" could not consider,

among other things, "communities of interest." In re Legis. Districting, 805 A.2d at 297-98. However, that is not the case for the court:

> When the Court drafts the plan, it may not take into account the same political considerations as the Governor and the Legislature. Judges are forbidden to be partisan politicians. Nor can the Court stretch the constitutional criteria in order to give effect to broader political judgments, such as the promotion of regionalism or the preservation of communities of interest. More basic, it is not for the Court to define what a community of interest is and where its boundaries are, and it is not for the Court to determine which regions deserve special consideration and which do not.
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> [Id. at 323.]

See also Graham, 207 F. Supp. 2d at 1296-97 ("It is not the province of this court to judge whether the legislature's redistricting choice achieves the best possible solution for particular communities of interest. Nor is the court in a position to weigh the relative importance or deservedness of particular communities of interest."). Accordingly, whether by applying the analysis above or simply the doctrine of judicial restraint, this Court should reject Plaintiffs' and the LWV's invitation to re-write the MWL or to reinterpret it in a way that is at odds with decades of precedent in this state and elsewhere.

## CONCLUSION

LWV offers no basis to grant Plaintiffs' appeal in any respect. Indeed, doing so would overturn sixty years of precedent in favor of a concept ill-suited to municipal redistricting. Thus, this Court should decline LWV's invitation to read "communities of interest" into the MWL and affirm the Law Division's dismissal of Plaintiffs' Complaint.

Respectfully submitted,
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Dated: December 4, 2024